

DOCKETED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

NOV 4, 1976

H. STUART CUNNINGHAM
At _____ o'clock
CLERK

THE MAGNAVOX COMPANY,)
a Corporation, and)
SANDERS ASSOCIATES, INC.,)
a Corporation,)

Plaintiffs,)

v.)

CHICAGO DYNAMIC INDUSTRIES,)
INC., a Corporation,)

Defendant.)

Consolidated
Civil Actions
No. 74 C 1030
No. 74 C 2510

C

PLAINTIFFS' CONTENTIONS OF FACT
RELATING TO DEVELOPMENT OF ACCUSED GAMES

Plaintiffs contend that the evidence will show the following facts relating to the development of the games alleged to infringe the patents in suit. (Defendants have stipulated to the contentions in paragraphs 47-53 but they are reproduced here for ease of reference):

47. The Magnavox video game ODYSSEY Model 1TL 200 was nationally publicized during the months of April and May 1972.

48. The Magnavox video games ODYSSEY include apparatus for simulating the playing of the game table tennis (ping pong).

49. In the Magnavox video game ODYSSEY, the display shown on the television picture tube screen includes a white rectangular symbol on the right side of the screen

representing one player, a white rectangular symbol on the left side of the screen representing a second player, and a white rectangular symbol representing a ball which moves across the screen and appears to bounce off the player symbols when it is coincident with one of the player symbols. The positions of the player symbols on the screen may be manipulated by the participants in the game to intercept the ball and return it to the other player.

50. The Magnavox video game ODYSSEY Model 1TL 200 was reported in an article appearing in the Wall Street Journal dated May 11, 1972. (Plaintiffs' Ex. 7B)

51. The Magnavox video game ODYSSEY Model 1TL 200 was reported in an article appearing in the trade publication Television Digest dated May 15, 1972. (Plaintiffs' Ex. 7C)

52. The Magnavox video game ODYSSEY Model 1TL 200 was reported in an article appearing in Time magazine dated May 22, 1972. (Plaintiffs' Ex. 7D)

53. The Magnavox video game ODYSSEY Model 1TL 200 was nationally demonstrated to Magnavox dealers, distributors, and sales personnel, and other persons at shows around the country during May 1972. The first such show began on May 3, 1972 in Phoenix, Arizona. One such show occurred on May 23-25, 1972 in Burlingame, California.

54. The first one of the games alleged to infringe the patents in suit which was manufactured and sold was Atari's Pong.

55. Pong was designed and built by Mr. Nolan K. Bushnell and Mr. Allen Alcorn of Atari.

56. Prior to August 21, 1969, Mr. Nolan K. Bushnell had had extensive experience in the field of coin-operated games, had been employed as a television technician, and had had experience in the programming of general purpose, stored program, digital computers and had had experience in the programming of general purpose, stored program, digital computers operated in conjunction with cathode ray tube displays.

57. Prior to August 21, 1969, Bushnell had not invented, designed, built, or constructed any apparatus for playing games using a television type, raster scan display.

58. Prior to August 21, 1969, Bushnell had no knowledge of the existence of any apparatus for playing games using a television type, raster scan display.

59. Prior to August 21, 1969, Bushnell had no knowledge of the existence of any apparatus using a cathode ray tube display for simulating the playing of the game table tennis or ping pong.

60. On May 24, 1972, and while employed by Nutting Associates, Inc., Mountain View, California, Bushnell attended the show referred to in paragraph 45 hereof in Burlingame, California and saw a demonstration

of the Magnavox video game ODYSSEY. Mr. Bushnell went to that show for the specific purpose of seeing the Magnavox video game ODYSSEY.

61. At the May 24, 1972 show, Mr. Bushnell saw the video game ODYSSEY in use to play a game simulating ping pong and actually played that game.

62. On June 15, 1972, Bushnell terminated his employment with Nutting Associates, Inc. and commenced devoting his full time to the activities of Syzygy Company, a partnership of Bushnell and Mr. S. Fred Dabney.

63. Some time after June 15, 1972, Bushnell entered into a "Royalty Agreement" with Bally Manufacturing Corporation, under which Bushnell agreed to supply to Bally a prototype of a video amusement game.

64. On June 26, 1972, Atari, Inc. was formed which succeeded to the business of Syzygy Company.

65. Some time after June 26, 1972, Mr. Allen Alcorn became an employee of Atari and Bushnell gave Alcorn the assignment of developing a video game which would simulate a tennis game to fulfill the agreement with Bally.

66. Mr. Alcorn and Mr. Bushnell then designed and built a prototype of a video game simulating tennis, which prototype became the video game Pong manufactured and sold by Atari.

67. The video game Pong was first manufactured

and sold by Atari in 1973.

68. The Atari video game Pong included portions of a television receiver originally intended for the reception of broadcast television signals.

69. During the production of the video game Pong, Atari used Hitachi, Toshiba, MGA, and Mitsubishi television receivers originally intended for the reception of broadcast television signals.

70. In the Atari video game Pong, the display shown on the picture tube screen includes a white rectangular symbol on the right side of the screen representing one player, a white rectangular symbol on the left side of the screen representing a second player, and a white rectangular symbol representing a ball which moves across the screen and appears to bounce off the player symbols when it is coincident with one of the player symbols. The positions of the player symbols on the screen may be manipulated by the participants in the game to intercept the ball and return it to the other player.

71. Seeburg had manufactured for it and sold a video game apparatus of the type and style of Atari's Pong under the name "Paddle Ball".

72. Seeburg first had manufactured and sold "Paddle Ball" after Atari's Pong was on the market and after Seeburg had acquired at least one Pong game. Plaintiffs' exhibit 10 is an Atari Pong game acquired by Seeburg before it had manufactured and sold "Paddle Ball".

73. The electrical circuitry of Seeburg's Paddle Ball was substantially identical to that of Atari's Pong.

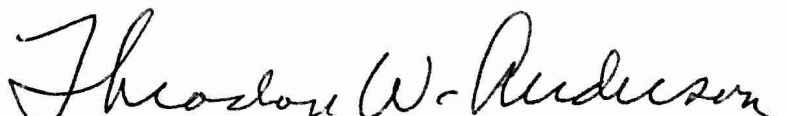
74. The images which appeared on the screen of the television display and the interaction of those images which occurred in Seeburg's Paddle Ball were substantially identical to those of Atari's Pong.

75. Beginning April 5, 1973, CDI manufactured and sold a video game apparatus of the type and style of Atari's Pong under the name "TV Ping Pong".

76. CDI's TV Ping Pong was copied from Atari's Pong.

77. The electrical circuitry of CDI's TV Ping Pong was substantially identical to that of Atari's Pong.

78. The images which appeared on the screen of the picture tube screen and the interaction of those images which occurred in CDI's TV Ping Pong were substantially identical to those of Atari's Pong.


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and Sanders Associates, Inc.

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing
PLAINTIFFS' CONTENTIONS OF FACT RELATING TO DEVELOPMENT
OF ACCUSED GAMES was served by hand delivering copies
thereof to:

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on this 4th day of November, 1976.



Attorney for The Magnavox Company
and Sanders Associates, Inc.